

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

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T.R.A. DOCKET ROOM

*Re: BellSouth's Motion for the* )  
*Establishment of New Performance* ) Docket No. 04-00150  
*Assurance Plan* )

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**OBJECTIONS OF COMPSOUTH  
TO BELL SOUTH TELECOMMUNICATIONS, INC.'S  
FIRST INTERROGATORIES TO COMPSOUTH**

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The Competitive Carriers of the South, Inc. ("CompSouth") hereby objects to the First Interrogatories of BellSouth Telecommunications, Inc. ("BellSouth").

**I. GENERAL OBJECTIONS**

CompSouth makes the following general objections, which apply to each of BellSouth's Interrogatories and other discovery requests ("Discovery Requests"):

1. CompSouth objects to the Discovery Requests to the extent they seek to impose obligations beyond the requirements of the Tennessee Rules of Civil Procedure. TRA Rule 1220-1-2-.11 requires that discovery in contested cases before the TRA be "effectuated in accordance with the Tennessee Rules of Civil Procedure [TRCP]."
2. a) The scope of discovery is not unlimited, and TRCP 26.02(1) allows the Authority to limit discovery if the court determines that the enumerated grounds for limiting discovery exist.

b) CompSouth objects to Instruction 4 contained in BellSouth's Interrogatories, which attempts to confer an obligation on CompSouth to supplement discovery responses beyond the obligations of TRCP 26.05 which provides:

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

- (1) A party is under a duty seasonably to supplement the party's response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of that testimony.
- (2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party (A) knows that the response was incorrect when made, or (B) knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.
- (3) A duty to supplement responses also may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

2. CompSouth objects to any attempt by BellSouth to regard these Interrogatories as conferring any obligation upon CompSouth's members, as distinguished from CompSouth itself, to respond. Neither the Definitions in these Interrogatories, as indicated in BellSouth's Definitions 2 and 4, nor BellSouth's Instructions confer such an obligation. As the TRA has ruled in other proceedings involving an intervenor, such as CompSouth, which is an association consisting of multiple members, the association cannot be required to produce information or make responses on behalf of individual members. See In Re: Proceeding for the Purpose of Addressing Competitive Effects of Contract Service Agreements, Docket 98-00559, "Pre-

Hearing Officer's Order on Petitions and Motions for Reconsideration and Clarification of Order Compelling Discovery," July 1, 1999, at 3 (affirmed by Order of Authority, February 2, 2000).<sup>1</sup>

3. CompSouth objects to Discovery Requests that ask, explicitly or using similar terms, whether CompSouth "contends" or "will contend" certain propositions of fact or opinion.

a. In the Response of CompSouth to Motion of BellSouth for the Establishment of a New Performance Measurement Plan, filed May 20, 2004, CompSouth requested, in the alternative to dismissal of BellSouth's Motion, a schedule that would permit CompSouth to file a comprehensive response to BellSouth's new plan. CompSouth stated that, after the filing of a comprehensive response, the Authority could proceed to conduct workshops or initiate a new proceeding. The Authority proceeded to sponsor a workshop and, subsequently, to appoint a hearing officer, who scheduled discovery and the filing of testimony. Consequently, until and unless CompSouth files testimony or a comprehensive responsive pleading, it has not developed positions with regard to BellSouth's stated propositions, and CompSouth should not be forced to articulate theories of its case not yet fully developed. B. Braun Medical Inc. v. Abbott Laboratories, 155 F.R.D. 525 (E.D. Pa. 1994). Moreover, BellSouth has now superseded its May 13, 2004 proposed plan, with a revised plan filed on December 21, 2004. CompSouth cannot be expected to comment at this time on the revised proposal. For all these reasons, whatever value the opinion-seeking interrogatories may have is outweighed, as is the case here, by the possibility of prejudice to the responding party by his answer, as where an interrogatory may require the party to select a legal theory before he or she is ready to do so, and subsequently discovered facts may render the answer damaging. Leumi Financial Corp. v. Hartford Acc. & Indem. Co., 295 F. Supp. 539 (S.D.N.Y. 1969).

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<sup>1</sup> In this case, the CompSouth members who are participating through CompSouth in this docket are listed in footnote 1 (as corrected) to the Petition to Intervene filed by CompSouth.

b) Moreover, interrogatories that seek purely legal conclusions that are not related to the facts of the case are not permissible. 23 Am.Jur.2d Depositions and Discovery, § 121.

4. CompSouth objects to the Discovery Requests to the extent they call for information that is exempt from discovery by virtue of the attorney-client privilege, the work product doctrine, or other applicable privilege. CompSouth further objects to the extent that Definition 15 in BellSouth's Interrogatories seeks information that is exempt from discovery by virtue of any such privilege.

5. CompSouth objects to the Discovery Requests to the extent that they seek information that is not relevant to any issue in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

a. BellSouth is obligated to provide non-discriminatory performance to CLECs, at parity with its own performance, pursuant to 47 U.S.C. § 271. See, e.g., In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Authorization to Provide In-Region, InterLATA Services in Florida and Tennessee, WC No. 02-307, Memorandum and Order, FCC 02-331 (rel. December 19, 2002), ¶ 98 ("where a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness"). Consequently, parity with BellSouth's performance, not the "actual harm" or "loss" to CLECs, is the relevant test in this case. Indeed, the reason for such plans is that CLECs will seldom know why they have lost customers or otherwise suffered damages as a result of ILEC nonfeasance or wrongdoing. Thus whether or not the CLECs present "proof" of "lost customers," "damages" or other "harm," is irrelevant to whether the

Authority should abandon the current plan or to make sweeping modifications to weaken its provisions. Indeed, the very existence of an adequate plan, with appropriate metrics and penalties is itself a critical deterrent to “backsliding.”

b. Likewise, the extent to which BellSouth contends that CLECs do not pay their end users amounts somehow representative of BellSouth’s penalty payments, or that payments received by CLECs for Tennessee are disproportionate to plan payments applicable to other states, or that CLECs receive penalty payments disproportionate in relation to total CLEC revenues, is irrelevant. What is relevant is the extent to which a performance plan represents parity of performance, and prevents “backsliding” by BellSouth.

c. BellSouth, not CLECs, has the burden of proof and the burden of going forward with evidence that demonstrates that the Authority, consistently with the dictates of state and federal law, including 47 U.S.C. § 271, should adopt BellSouth’s proffered new performance measurements and penalty plan. See In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, CC No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. August 19, 1997), ¶ 158. Several of BellSouth’s Discovery Requests seek information that, instead, attempt to shift the burden to CompSouth to demonstrate facts or opinions that are irrelevant to the parity of performance or to the merits of BellSouth’s proposed plan, and ignore one of the principle purposes of performance metrics and corresponding penalties for non-conformance, which is that CLECs cannot be expected to demonstrate actual losses or harm.

d. BellSouth’s Motion proposes a new “streamlined” performance plan that, according to BellSouth, will be “transactions” based, more “rational,” will prevent “backsliding,”

avoid “excessive” and “unjust” penalties and “unjust enrichment,” and not constitute an “undue” administrative burden. See, e.g., BellSouth’s Motion, pp. 3-4. BellSouth’s Discovery Requests seek “facts” or opinions the relevance of which has not been indicated and which is not self-evident, and where, consequently, it is difficult to fathom, in the absence of clarification by BellSouth as to the meaning of the above terms or how its bare allegations relate to its obligations under law, or how the information sought would lead to possible other information that would be of use to BellSouth or to a narrowing of the issues. Carlson Companies, Inc. v. Sperry & Hutchinson Co., 374 F. Supp. 1080 (D. Minn. 1973).

e) As stated above, BellSouth has superseded its May 13, 2004 filing with a revised proposed plan. Thus any Discovery Request that requests information regarding the May 13, 2004 filing is irrelevant in this proceeding.

6. CompSouth objects to the Discovery Requests to the extent they are vague, ambiguous, overly broad, imprecise, utilize terms (e.g., “damages,” “negatively impacted,” “compare”) that are subject to multiple interpretations but are not properly defined or explained for purposes of these requests, or are unduly burdensome or oppressive.

7. CompSouth objects to the Discovery Requests to the extent they seek trade secrets, or other proprietary and confidential information. Such information, to the extent CompSouth is in possession of it, would be provided subject to an appropriate confidentiality agreement to be executed by BellSouth, a copy of which is attached hereto, and any protective order, as may be issued in this docket, subject to any other general or specific objections contained herein.

8. CompSouth objects to providing information to the extent that such information is already in the public record before the Authority or which is already in the possession, custody, or control of BellSouth. CompSouth specifically directs BellSouth to:

a) Information regarding SEEMs penalties paid by BellSouth to individual CLECs, which is in BellSouth's possession.

b) The recent information submitted in docket 97-00309: As a result of the workshop held September 14, 2004 by the TRA in that docket, a transcript was prepared that is available to BellSouth. On September 16, 2004 Director Tate wrote the CLECs that had participated in the workshop to encourage them to accept BellSouth's offer to refer that company "four or five top issues" for resolution, and to identify company contacts for each such issue. On that same date Director Tate wrote BellSouth offering to facilitate additional workshops, informal meetings and mediation, to resolve such issues. On September 28, 2004, counsel for several CLECs served BellSouth and filed in that docket a letter discussing six areas (troubles within 30 days of provisioning; repeat troubles within 30 days; customer trouble report rate; missed repair appointments; inability to test line-shared loops; and premature trouble closure) in which BellSouth's performance is negatively affecting customers of Birch Telecom, ITC^DeltaCom/BTI, Covad, and AT&T, respectively. On October 12, 2004, per Director Tate's request, counsel for AT&T served BellSouth and filed in that docket a list of CLEC contact names and individuals, corresponding to the six affected areas of performance.<sup>2</sup>

9. CompSouth objects to the BellSouth discovery that seeks to obtain "all," "any and all," "each," or "every" document, item, customer, or other such piece of information to the extent that such discovery is overly broad and unduly burdensome.

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<sup>2</sup> To the knowledge of CompSouth, BellSouth has yet to respond to the CLECs' letter

10. CompSouth objects to the Discovery Requests to the extent they are not limited to any stated period of time or state a period of time that is longer than is relevant for purposes of the issues in this docket, as such discovery is overly broad and unduly burdensome.

## **II. INTERROGATORIES**

**1. State each example of BellSouth's performance in its wholesale service of any kind that you will contend in this docket has declined in quality since BellSouth obtained 271 relief in Tennessee. For each such example, provide the basis for your contention, including all examples of specific instances of performance issues of which you are aware, and, if your contention is based on any fact other than your company's own experience, state the source of such information, including the company involved.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 8 and 9. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**2. Identify each SEEM penalty payment you have received in the last twelve months, and, for each payment, describe in detail how such payment relates to actual harm sustained by your company as a result of the wholesale service measured by the particular benchmark for which the SEEM payment was provided.**

RESPONSE: To the extent that BellSouth seeks information as to SEEM penalty payments that CompSouth members have received, CompSouth objects on the grounds stated in General Objections 2, 8 and 9. As to the remainder of the interrogatory, CompSouth objects on the grounds stated in 3, 5, 6, 8 and 9. CompSouth also objects on the grounds of relevancy, since, as BellSouth is aware (because BellSouth is advocating a "transactions"-based



performance plan to supplant the existing plan), CLECs are unable to relate the payment of particular penalties under the current plan to specific transactions. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**3. State the percentage of your company's Tennessee (intra-state) revenue represented by Tennessee SEEM payments for each calendar year beginning in 2002.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2 and 5.

**4. Identify all CLEC customers (if any) that you contend you have lost as a result of the quality of wholesale service provided by BellSouth, and for each such customer, identify the service issue you believe caused the loss.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 7, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**5. Do you contend that your company has sustained harm to its reputation as a quality local service provider as a result of BellSouth's wholesale performance. If your answer is anything other than an unqualified "no", then state all facts, including all specific customer information, on which your contention is based.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 7, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**6. If you contend that there have been instances where BellSouth erroneously reported that a trouble has been repaired and the trouble ticket closed, yet your customer**

**still did not have service, please provide the trouble ticket number, date of ticket closure and line or circuit identifier for each instance.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**7. Identify all damages (if any) you have sustained that arise out of the quality of wholesale service provided by BellSouth pursuant to the Plan.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 5, 6, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**8. Quantify all damages (if any) you have sustained that arise out of the quality of wholesale service provided by BellSouth pursuant to the Plan.**

RESPONSE: Same objections and response as given to Interrogatory 7 above.

**9. Describe in detail all examples of CLEC customers that you contend have been negatively impacted by service provided by BellSouth for each SEEM submetric that is associated with:**

- (i) Troubles Within 30 days of Provisioning**
- (ii) Repeat Troubles Within 30 Days**
- (iii) Customer Trouble Report Rate**
- (iv) Missed Repair Appointments**
- (v) Inability To Test Line Shared Loops**
- (vi) Premature Trouble Closure**

**(vii) Any other measure (list specific measure)**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 7, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**10. Describe in detail all examples of CLEC customers that you contend have been negatively impacted by service provided by BellSouth in any function not currently reflected in the SQM or SEEM.**

RESPONSE: Same objections and response as given to Interrogatory 9 above.

**11. If you contend that BellSouth is “backsliding” (providing service inferior to that service provided when BellSouth received 271 relief) in the quality of wholesale service in Tennessee, describe in detail all such instances you contend to be examples of “backsliding”.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**12. Identify each specific provision of BellSouth’s SQM and SEEM proposal filed on May 13, 2004 to which you object and the nature and reason for the objection.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 8, 9 and 10. CompSouth notes that BellSouth has filed a revised plan; thus BellSouth has superseded its May 13, 2004 proposal, and thus the Interrogatory as phrased is irrelevant.

**13. If you contend that the Plan's scope should be extended beyond ensuring BellSouth's continued compliance with obligations arising under Section 251, please identify all legal authority, including but not limited to case law, orders, and statutes, that supports your contention.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 8, 9 and 10. Subject to these objections, CompSouth specifically directs BellSouth to the information described in paragraphs 3(a) and 8 of the General Objections above.

**14. Have you developed an alternative performance assessment plan for BellSouth in Tennessee? If so, please provide all information that describes the alternative plan.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 8, 9 and 10. Subject to these objections, CompSouth refers BellSouth to the plan adopted by the TRA on June 28, 2002 in docket 01-00193.

<http://www.state.tn.us/tra/orders/2001/010019389.pdf>

**15. Identify all amounts that you have paid to any customer as a result of service issues you contend to have arisen out of quality of wholesale service provided by BellSouth pursuant to the Plan.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 5, 6, 7, 9 and 10.

**16. Do you agree that an enforcement plan should have both positive incentives and negative consequences? If not, why not?**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 3, 4, 5 and 6.

**17. Compare the amounts paid to you under the Tennessee SEEM plan to the amounts paid in each other state outside of BellSouth's region where you have operations. The amounts should be stated in total and per access line you serve in that state.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 5, 6, 8 and 10.

### **III. REQUESTS FOR PRODUCTION OF DOCUMENTS**

**1. Produce any documents relied upon in responding to First Set of Interrogatories.**

RESPONSE: CompSouth objects for the same reasons stated above in responding to each of these Interrogatories. In addition, CompSouth objects for the reasons stated in General Objections 4 and 8 above.

**2. Produce any documents identified in responses to BellSouth's First Set of Interrogatories.**

RESPONSE: CompSouth objects for the reasons stated in General Objections 4 and 8 above.

**3. Produce all documents in your possession relating to SEEM penalties received by your company since the adoption of the Tennessee plan, including but not limited to any budgeting or financial planning documents or forecasting materials.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 5, 6, 7, 8, 9 and 10.

**4. Produce all internal communications discussing or relating in any way to BellSouth's wholesale performance.**

RESPONSE: CompSouth objects on the grounds stated in General Objections 2, 4, 5, 6, 7, 9 and 10.

**5. Identify and produce all correspondence in your possession regarding BellSouth's wholesale performance from 2002 to present.**

RESPONSE: Same objections and responses as given to Request to Produce 4 above.

**6. Produce any alternative performance assessment plan or recommendations that you have developed.**

RESPONSE: Same objections and response as given to Interrogatory 14 and General Objection 8 above.

**7. Produce any draft or partial alternative performance assessment plan that you have discussed or considered in any of Bellsouth's region (Tennessee, Florida, Georgia, Kentucky, North Carolina, South Carolina, Alabama, Louisiana and Mississippi).**

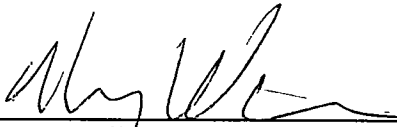
RESPONSE: Same objections and responses as given to Interrogatory 14 above. In addition, CompSouth objects for the reasons stated in General Objections 4 and 8 above.

**8. Produce all contract and tariff provisions that relate to your company's obligations (if any) in the event that your customer sustains a service interruption or otherwise sustains a derogation of service.**

RESPONSE: Same objections and responses as given to Interrogatory 15 above.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to Guy Hicks, BellSouth Telecommunications, 333 Commerce Street, Nashville, TN 37201-3300 on this the 7th day of January, 2005.

  
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Henry M. Walker